REMARKS/ARGUMENTS

This Amendment is in response to the Office Action mailed March 9, 2006. In the Office Action, claim 8 was rejected under 35 U.S.C. §112. Moreover, claims 6-7, 9-11, 17-23 and 25-28 were rejected under 35 U.S.C. §102 and claims 12, 24 and 29 were rejected under 35 U.S.C. §103. Applicant has amended claims 6 and 7. Claims 9 and 20-29 have been cancelled without prejudice and claims 30-38 have been added. Reconsideration in light of the newly added claims as well as the amendments and remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 112

Claim 8 was rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite. Applicant respectfully disagrees because, as claimed, the third effective isotropic radiated power is an increase after the reduction from the first effective isotropic radiated power to the second effective isotropic radiated power. Therefore, the third effective isotropic radiated power is between the other power levels. Claim 7 has been amended to clarify the operational order.

Applicant respectfully requests that the Examiner withdraw the rejection of claim 8 under 35 U.S.C. §112, second paragraph.

Rejection Under 35 U.S.C. § 102

Claims 6-7, 9-11, 20-23 and 25-28 were rejected under 35 U.S.C. §102(e) as being anticipated by Moon (U.S. Patent No. 6,671,266). Applicant respectfully requests the Examiner to withdraw the rejection because a *prima facie* case of anticipation has not been established.

As the Examiner is aware, to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Vergegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

For instance, with respect to independent claim 6, Applicant respectfully submits that Moon does not describe the operation of reducing a level of effective isotropic radiated power *in accordance with a logarithmic function*. Emphasis added. In contrast, the power ratio between channels spread with orthogonal codes and quasi-orthogonal codes does not constitute a logarithmic function as claimed. Reconsideration and withdraw of the outstanding §102(e) rejection as applied to pending claims 6-7 and 10-11 is respectfully requested.

Furthermore, claims 17-19 were rejected under 35 U.S.C. §102(e) as being unpatentable over Moon in view of Thomson (U.S. Patent No. 6,304,760). Applicant respectfully requests the Examiner to withdraw the rejection because a *prima facie* case of anticipation again has not been established. Herein, the Office Action states that column 5, lines 46-50 of Thomson discloses the response to the signal is a beacon from a second electronic device. Applicant respectfully

disagrees because the teachings of Thomson are directed to the transmission of the beacon, but these transmissions are not as a *response* to a signal as claimed. Emphasis added. It is noted that PS-Poll signaling may be used to initiate a broadcast, but such signaling is not used to adjust the effective isotropic radiated power level. Reconsideration and withdraw of the outstanding §102(e) rejection as applied to pending claims 17-19 is respectfully requested.

Rejection Under 35 U.S.C. § 103

Claims 12, 24 and 29 were rejected under 35 U.S.C. § 103(a) as being "rendered unpatentable" over Moon. Applicant respectfully traverses the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).* Herein, the cited reference (Moon) fails to describe or suggest all the claim limitations.

With respect to independent claims 12, 24 and 29, the Examiner takes Official Notice that the concept [of] a rate change of power is well-known. First, Applicant traverses the Official Notice. Second, even if, the concept of a rate change is well-known, the particular selected degree of the rate of change is not well-known and is selected for the particular invention, where "the rate of change from the first level of effective isotropic radiated power to the second level of effective isotropic radiated power is greater than a rate of change from the second level of effective isotropic radiated power to the third level of effective isotropic radiated power." Applicant respectfully requests the Examiner to supply evidence of such teaching because Moon is devoid of any teaching or suggestion of these differences in the rates of change.

Reconsideration and withdraw of the outstanding §103(a) rejection as applied to pending claim 12 is respectfully requested.

Conclusion

Applicant respectfully requests reconsideration of the rejections and issuance of a timely Notice of Allowance based on the allowability of the pending claims.

Respectfully submitted,

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